IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

OP.No. 32435 of 1999(J)

PETITIONER:

M/S.BIRLA YAMAHA LTD.,
ERNAKULAM, REP. BY ITS
DEPUTY MANAGER
JOHN MATHEW.

BY ADV. SMT.S.K.DEVI
SRI.DEEPSUR D.JAYAN

RESPONDENTS:
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1. THE ASST. COMMISSIONER(ASSMT)I,
DEPT. OF COMMERCIAL TAXES,
SPL. CIRCLE-III, ERNAKULAM.

2. STATE OF KERALA, REP. BY ITS
CHIEF SECRETARY, SECRETARIAT,
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON 15/11/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.54997/1999 IN O.P. NO.32435/1999

DISMISSED:

15.11.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF ORDER DT.8.12.99 ISSUED BY R1.

P2: TRUE COPY OF D/D NO.267878 DT.10.11.99.

P3: TRUE COPY OF NOTICE DT.16.11.99 ISSUED BY R1 TO PETITIONER.

P4: TRUE COPY OF LETTER TO R1.

P5: TRUE COPY OF DEMAND NOTICE DT.4.12.99.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.32435 of 1999

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Dated this the 15th day of November, 2007.

JUDGMENT

The petitioner is challenging Ext.P1 order whereunder the Assessing Officer has levied penalty at equal amount of tax under Section 45A(i)(c) of the KGST Act for belated payment of tax for the month of October 1999. The case of the petitioner is that delay in payment of tax is only for five days and the same was not deliberate. Counsel contended that maximum penalty for technical violation can be only Rs.5,000/- and there is no justification to levy equal amount of tax for a mere delay of 5 days in filing the return. I find force in this contention. Moreover, it is seen that the officer has not considered the general conduct of the petitioner in regard to compliance of statutory provisions. If delay in filing of monthly return is the single instance of lapse and petitioner is not a chronic defaulter, then there is no justification to levy such huge amount of penalty. In fact, no penalty should be levied for a mere technical violation and the officer should have demanded only interest for the belated payment of tax. The O.P. is accordingly disposed of setting aside Ext.P1 with direction to the officer to verify the assessment records for the year 1999-2000 and

reconsider penalty keeping in mind the above observations. If there is no scope for penalty, he will withdraw the proposal and if there is a case for penalty, he will issue fresh notice, hear the petitioner and pass orders.

C.N.RAMACHANDRAN NAIR
Judge

pms